



C-91-10-067-M-02  
**BEFORE THE DIRECTOR OF THE  
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY**

**In the Matter of:**

Cave Creek Landfill located at 8.3 miles east of I-17, approximately ½ mile south of Carefree Highway, Phoenix, Maricopa County, Arizona

ADEQ Place ID #1169

**AMENDMENT # 1 TO**

**CONSENT ORDER**

**Docket No. S-2-10**

**I. RECITALS**

- A. Maricopa County, a political subdivision of the State of Arizona (Maricopa County), is the owner and/or operator of Cave Creek Landfill located at 8.3 miles east of I-17, approximately ½ mile south of Carefree Highway, Phoenix, Maricopa County, Arizona.
- B. Clint Hickman is Chairman of the Maricopa County Board of Supervisors and Maricopa County certifies that he is fully authorized to execute this Amendment # 1 to Consent Order S-2-10 on behalf of Maricopa County and to legally bind Maricopa County to this Amendment #1 to Consent Order S-2-10.
- C. Arizona Department of Environmental Quality (ADEQ) and Maricopa County entered into Consent Order S-2-10, effective on January 19, 2010.
- D. On May 19, 2016, Maricopa County requested a change in the frequency and content of required written status reports to better reflect the current status of the remedial activities taking place at the site.
- E. Maricopa County and ADEQ agree to amend Consent Order S-2-10 as stated herein.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows:

**II. INCORPORATION OF RECITALS**

The Recitals hereinabove are incorporated in this Amendment #1 to Consent Order S-2-10 and made a part hereof by this reference.

Initials CH

### **III. STATUS REPORTS**

A. On Consent Order S-2-10, Section IV, paragraphs A and B are stricken in their entirety and the following is inserted:

- A. Maricopa County agrees to submit quarterly written status reports to ADEQ every ninety (90) calendar days, beginning the effective date of this Amendment #1 to Consent Order S-2-10, until termination of Consent Order S-2-10. Each quarterly status report shall describe what measures have been taken to implement the Remedial Action Plan (RAP) and shall include soil vapor extraction (SVE) operation reporting, groundwater treatment operation reporting, groundwater monitoring data, and a Gantt chart depicting progress on the remedial activities detailed in Table 8-2 of the RAP. Each quarterly status report shall be accompanied by evidence of compliance including, as appropriate, submittal of documents, photographs or copies of any other supporting information that Maricopa County deems necessary.
- B. ADEQ will review the quarterly status report and relay any disputes in writing to Maricopa County. Maricopa County shall incorporate all required modifications, changes or other alterations, as requested by ADEQ.

### **III. EFFECTIVE DATE**

The effective date of this Amendment # 1 to Consent Order S-2-10 is the date this Amendment is signed by ADEQ and Maricopa County. If ADEQ and Maricopa County sign on different dates, the later date is the effective date of this Amendment.

### **IV. AMENDMENT**

The foregoing paragraphs contain all the changes made by this Amendment #1 to Consent Order S-2-10. All other terms and conditions of Consent Order S-2-10 remain the same and in full force and effect. If there is a discrepancy between the provisions of this Amendment #1 to Consent Order S-2-10 and Consent Order S-2-10, the provisions of this Amendment #1 to Consent Order S-2-10 shall control.

Signed this 27<sup>th</sup> day of September, 2016



Laura Malone, Director  
Waste Programs Division  
Arizona Department of Environmental Quality


**CONSENT TO ORDER**

Maricopa County acknowledges and agrees:

- A. With the statements made,
- B. To this Amendment # 1 to Consent Order S-2-10 with the Arizona Department of Environmental Quality,
- C. That Maricopa County will comply with this Amendment # 1 to Consent Order S-2-10 and waive any right to appeal, and
- D. That the Consent Order S-2-10 shall remain in full force and effect, except as modified by this Amendment # 1 to Consent Order S-2-10.

Signed this 28 day of September, 2016.

Maricopa County



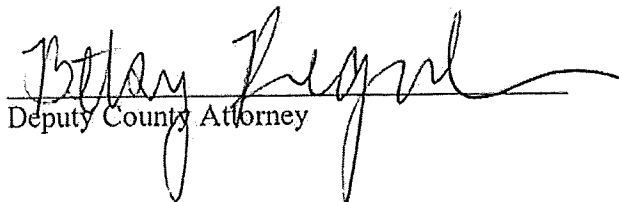
Clint Hickman  
Chairman of the Board

ATTEST:



Clerk of the Board 090716

Approved As To Form:



Deputy County Attorney

**ORIGINAL** of this Amendment #1 to Consent Order S-2-10 was sent certified mail, return receipt requested, this 28 day of September, 2016, to:

CC: Via certified mail, return receipt requested on:

Clint Hickman, Chairman  
Maricopa County Board of Supervisors  
301 W. Jefferson St.  
10<sup>th</sup> Floor  
Phoenix, 85003

[Certified Mail "Z" Number]

CC: on:  
Arizona Department of Environmental Quality  
Office of Administrative Counsel  
Attention: Hearing Administrator  
1110 West Washington Street  
Phoenix, Arizona 85007-2935

Curtis Cox, Chief Counsel  
Environmental Enforcement Section  
Office of the Attorney General  
1275 West Washington Street  
Phoenix AZ, 85007

Richard Olm, P.E.  
Arizona Department of Environmental Quality  
Hazardous and Solid Waste Section  
Waste Programs Division  
1110 West Washington Street  
Phoenix, AZ 85007



**BEFORE THE DIRECTOR OF THE  
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY**

**In the Matter of:**

**CONSENT ORDER**

Cave Creek Landfill located at 8.3 miles east of  
I-17 approximately 1/2 mile south of Carefree  
Highway Phoenix, Maricopa, Arizona

Azurite Place ID 1169

**Docket No.** S-2-10

Maricopa County in its capacity as owner and/or operator of Cave Creek Landfill located at 8.3 miles east of I-17 approximately 1/2 mile south of Carefree Highway, Phoenix, Maricopa, Arizona.

**RECITALS**

Maricopa County acknowledges that no promise of any kind or nature whatsoever, was made to induce it to enter into this Consent Order, and Maricopa County has done so voluntarily.

Maricopa County acknowledges that by entering into this Consent Order, it does not resolve any liability it may have for civil penalties for violations of any State or Federal environmental law.

By entering into this Consent Order, Maricopa County does not admit to any civil or criminal liability, or waive any right including but not limited to the assertion of any defense available to Maricopa County under applicable law. Further, Maricopa County does not admit, and both the Arizona Department of Environmental Quality (ADEQ) and Maricopa County retain the right to controvert in any subsequent proceeding except proceeding to implement or enforce this Consent Order, the validity of any Findings of Fact or Conclusions of Law contained in this Consent Order.

Initials WJP

1 The undersigned representative of Maricopa County certifies that he is fully authorized to  
2 execute this Consent Order on behalf of Maricopa County and to legally bind Maricopa County  
3 to this Consent Order.

4 Maricopa County admits to the jurisdiction of the Director of ADEQ.

5 Except as to the right to controvert the validity of any Findings of Fact or Conclusion of  
6 Law contained in this Consent Order in a proceeding other than to enforce this Consent Order,  
7 Maricopa County consents to the terms and entry of this Consent Order and agrees not to contest  
8 the validity or terms of this Consent Order in any subsequent proceeding.

9 **THEREFORE, IT IS HEREBY ORDERED** as follows:

10 **I. JURISDICTION**

11 The Director of ADEQ has jurisdiction over the subject matter of this action and is  
12 authorized to issue this Consent Order pursuant to the Arizona Revised Statutes (A.R.S.) §§ 41-  
13 1092.07(F)(5), 49-261, and 49-781.

14 **II. FINDINGS**

15 **THE DIRECTOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**  
16 **CONCLUSIONS OF LAW:**

17 **A. Findings of Fact**

18 1. The Cave Creek Landfill is owned and operated by Maricopa County and  
19 is located approximately one-half mile south of Carefree Highway, about three miles west of  
20 Cave Creek Road, and 8 miles east of Interstate 17 in Phoenix, Arizona, Maricopa County.

21 2. During the May 11, 1998, routine inspection of the facility, the Solid  
22 Waste Inspections and Compliance Unit (SWICU) observed from the groundwater monitoring  
23 results of landfill monitoring well MW1 0.005 milligrams per liter (mg/L) of trichloroethylene  
24 (TCE) which exceeds Aquifer Water Quality Standards (AWQS) and at 0.015 mg/L in December  
25 1997.

1           3.     During the May 11, 1998, inspection, the SWICU also observed that the  
2 facility did not place a notice of the exceedence in their operating record; did not notify ADEQ  
3 of the exceedence; and did not establish a monitoring program or demonstrate that the  
4 exceedence was caused by some condition other than the landfill within ninety (90) days of  
5 detecting the exceedence.

6           4.     A Notice of Violation (NOV) was issued to Maricopa County on July  
7 1998, alleging violations observed during the inspection.

8           5.     Additional groundwater monitoring conducted on May 28, 1998, and July  
9 28, 1998, illustrated 0.089 mg/L and 0.085 mg/L TCE in monitoring wells MW1 and MW2.

10          6.     On September 16, 1998, and October 23, 1998, the SWICU received a  
11 letter from Maricopa County indicating that the groundwater levels in MW1 and MW2 were too  
12 low to obtain adequate samples.

13          7.     On November 17, 1998, and March 26, 1999, Maricopa County obtained  
14 groundwater samples from a production well located at the north end of the landfill and MW-2  
15 which indicated 0.012 mg/L and 0.017 mg/L of TCE and 0.007 mg/L and 0.063 mg/L of TCE,  
16 respectively. Maricopa County was unable to sample groundwater monitoring wells MW1 due to  
17 continued low groundwater levels on November 17, 1998.

18          8.     On August 15, 1999, Maricopa County entered into an administrative  
19 order (Docket #S-189-99) with ADEQ that required Maricopa County to characterize the nature  
20 and source of groundwater contamination. This consent order allowed Maricopa County an  
21 opportunity to demonstrate that the landfill was not a source of the TCE contamination.

22          9.     Maricopa County did not submit a plan to install a new monitoring well or  
23 other means of collecting down gradient water samples after determining that there was  
24 insufficient water in the monitoring wells to collect adequate samples. Instead, Maricopa County  
25

1 was actively working to towards demonstrating that the contamination was a result of another  
2 landfill north of the Cave Creek Landfill that had been closed since the 1970s.

3 10. On October 14, 1999, the SWICU sent a letter to Maricopa County  
4 notifying it that they did not adequately demonstrate that the TCE contamination in groundwater  
5 at that landfill was the result of a source other than the Cave Creek Landfill.

6 11. On June 28, 2005, Maricopa County entered into Consent Order (Docket #  
7 S-102-05) with ADEQ that required the characterization and remediation of the contamination.

8 12. On August 26, 2005, Maricopa County submitted *Maricopa County*  
9 *Waste Management Cave Creek Landfill Groundwater Characterization Plan*, (Work Plan)  
10 dated August 26, 2005.

11 13. On December 31, 2005, Maricopa County sent ADEQ a letter requesting  
12 approval of the Work Plan and the proposed location of the additional ground water monitoring  
13 well. This new well was proposed as part of the Work Plan, as required by Section III of Consent  
14 Order, docket number S-102-05.

15 14. On August 31, 2006, ADEQ sent a letter to Maricopa County approving  
16 the location of the proposed groundwater monitoring well (MW-3). The letter also requested that  
17 Maricopa County submit a modified Work Plan including procedures and timeframes for  
18 submitting an alternative well location(s) in the event that sampling of MW-3 did not provide  
19 conclusive information regarding the extent of groundwater contamination.

20 15. On November 5, 2008, Maricopa County submitted *Maricopa County Risk*  
21 *Management Department, Cave Creek Landfill Groundwater Remedial Action Plan*, (RAP)  
22 dated September 25, 2008. ADEQ had not received the modified Work Plan; therefore, ADEQ  
23 had not approved the Work Plan, nor had Maricopa County submitted a Groundwater  
24 Characterization Report, as required by Consent Order Docket S-102-05, Section III.

25



1           16.    On January 29, 2009, ADEQ and representatives of Maricopa County met  
2 to discuss the RAP and the Work Plan.

3           20.    On February 13, 2009, the Solid Waste Plan Review Unit (SWPRU) sent a  
4 letter to Maricopa County explaining that the submittal of the RAP was premature. The letter  
5 outlined the required information including groundwater flow directions, volatile organic  
6 compounds distribution, groundwater monitoring well locations, and hydrogeologic conditions  
7 of the vicinity of the landfill prior to beginning remedial alternative evaluation.

8           22.    On May 11, 2009, Maricopa County submitted the *Addendum to the Cave*  
9 *Creek Landfill Groundwater Characterization Work Plan*. On May 13, 2009, ADEQ notified  
10 Maricopa County in writing of their approval of the Work Plan and the proposed schedule.

11           B.    Conclusions of Law

12           1.    Cave Creek Landfill accepted household solid waste as defined in A.R.S.  
13 § 49-701(14) and 40 CFR § 258.2, incorporated by into state law by A.R.S. § 49-761(B), and is a  
14 municipal solid waste landfill as defined in A.R.S. § 49-701(20) and 40 CFR § 258.2.

15           2.    Cave Creek Landfill ceased accepting waste in 1999 and is a closed solid  
16 waste facility as defined in A.R.S. § 49-701.3.

17           3.    The AWQS for TCE is 0.005 ppm as established by A.A.C. R18-11-  
18 406(C).

19           4.    Maricopa County violated 40 CFR § 258.54(c) incorporated by A.R.S. §  
20 49-761(B) by failing to begin assessment monitoring within 90 days of detecting a statistically  
21 significant exceedence of TCE over background levels, and by failing to successfully  
22 demonstrate within 90 days that a source other than the landfill caused the contamination.

23           5.    Maricopa County violated 40 CFR § 258.55(g)(1)(i-ii) incorporated by  
24 A.R.S. § 49-761(B) by failing to characterize the nature and extent of groundwater  
25

1 contamination by installing a least one additional monitoring-well at the facility boundary in the  
2 direction of contaminant migration.

3 6. Maricopa County violated 40 CFR § 258.55(g)(iv) and 40 CFR § 258.56  
4 incorporated by A.R.S. § 49-761(B) by failing to initiate assessment of corrective actions within  
5 90 days of finding a statistically significant level of TCE exceeding AWQS.

### 6 III. COMPLIANCE SCHEDULE

7 **THE DIRECTOR HEREBY ORDERS** and Maricopa County agrees to comply with the  
8 provisions of this Consent Order as follows:

9 A. Within ninety (90) calendar days of receipt of ADEQ's approval of the revised  
10 Work Plan, Maricopa County must implement the activities as described within the revised Work  
11 Plan. Good faith attempts by Maricopa County to secure legal access to properties owned by  
12 third parties will be considered initiation of the activities as described in the revised Work Plan.

13 B. Within one-hundred-twenty (120) calendar days of completion of the activities of  
14 the revised Work Plan and written evidence that ADEQ agrees that groundwater characterization  
15 is complete, Maricopa County shall submit a report that includes the following information:

16 1. The results of all tasks and deliverables included in the Work Plan that  
17 assess the nature, source and extent of groundwater contamination; and

18 2. A revised RAP that evaluates the potential corrective measures in  
19 accordance with 40 CFR § 258.56 and, based on this evaluation, lists proposed remedies that  
20 meet the standards described in 40 CFR § 258.57(d)(1) through (8).

21 a. The revised RAP shall addresses any deficiencies of the September  
22 2008, RAP, as noted in SWPRU's February 13, 2009, letter that were not addressed in the  
23 revised Work Plan.

1                   b.     If any deficiencies are noted in ADEQ's review of the RAP  
2 Maricopa County shall address these deficiencies within the reasonable time frames established  
3 by ADEQ.

4           D.     Within sixty (60) calendar days from ADEQ's approval of the revised RAP,  
5 Maricopa County must present the results of the corrective measures assessment, prior to the  
6 selection of a remedy, in a public meeting with interested and affected parties. The public  
7 meeting shall be scheduled at a time that is mutually agreeable between ADEQ and Maricopa  
8 County.

9           E.     Within sixty (60) calendars days from the date of the public meeting, Maricopa  
10 County shall propose a remedy with a schedule for initiating and completing remedial activities  
11 pursuant to 40 CFR § 258.57(d)(1). If any deficiencies are noted during the review of the  
12 proposed remedy, Maricopa County must address these deficiencies during within reasonable  
13 time frames established by ADEQ. Upon receipt of ADEQ's approval of the remedy selection  
14 and schedule the selected remedy shall be incorporated by reference into and enforceable under  
15 this order.

#### 16                                   IV. STATUS REPORTS

17           A.     Maricopa County agrees to submit a written status report to ADEQ every thirty  
18 (30) calendar days beginning thirty (30) days from the effective date of this Consent Order, until  
19 termination of this Consent Order. Each written status report shall describe what measures have  
20 been taken under Section III, of this Consent Order, and shall certify when compliance with the  
21 requirements of Section III of this Order has been achieved. Each report shall be accompanied  
22 by evidence of compliance including, as appropriate, submittal of documents, photographs or  
23 copies of any other supporting information that Maricopa County deems necessary.

1 B. ADEQ will review the status reports and relay any disputes in writing to  
2 Maricopa County. Maricopa County shall incorporate all required modifications, changes or  
3 other alterations, as requested by ADEQ, within a reasonable time specified by ADEQ.

4 **V. VIOLATIONS OF ORDER/STIPULATED PENALTIES**

5 A. Under A.R.S. § 49-783, violation of this Consent Order subjects Maricopa  
6 County to civil penalties of up to \$1,000 per day per violation not to exceed fifteen thousand  
7 dollars for each violation. ADEQ and Maricopa County agree that the calculation of civil  
8 penalties for violation of this Consent Order would be very difficult.

9 B. ADEQ and Maricopa County therefore agree that if Maricopa County fails to  
10 comply with any requirement of this Consent Order, Maricopa County shall pay a stipulated  
11 penalty pursuant to the schedule below:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day of Violation</u>
1 <sup>st</sup> to 30 <sup>th</sup> day	\$200 per day per violation
31 <sup>st</sup> to 60 <sup>th</sup> day	\$300 per day per violation
After 60 days	Statutory Maximum (\$15,000)

16 C. Except as otherwise provided herein, stipulated penalties shall begin to accrue on  
17 the day that performance is due or that a violation of this Consent Order occurs and shall  
18 continue to accrue until correction of the act of noncompliance is completed. Neither issuance  
19 by ADEQ nor receipt by Maricopa County of a Notice of Violation of the terms and conditions  
20 of this Consent Order are conditions precedent to the accrual of stipulated penalties.

21 D. Stipulated penalty payments shall be made pursuant to a civil settlement (e.g.,  
22 Consent Judgment) with ADEQ filed in a court of competent jurisdiction. If ADEQ and  
23 Maricopa County are unable to reach agreement for payment of stipulated penalties under a civil  
24 settlement, or if Maricopa County fails to make payment of stipulated penalties due under a civil  
25

1 settlement, ADEQ may file a civil action seeking the maximum civil penalty allowed under  
2 Federal or State law for violation of this Consent Order.

3 E. The stipulated penalties required by this Consent Order shall be in addition to  
4 other remedies or sanctions available to ADEQ by reason of any failure by Maricopa County to  
5 comply with the requirements of Federal or State laws. The payment of stipulated penalties shall  
6 not relieve Maricopa County from compliance with the terms and conditions of this Consent  
7 Order or Federal or State laws, nor limit the authority of the State to require compliance with the  
8 Consent Order or State law.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

2  
3  
4  
5

6  
7  
8  
9  
10  
11  
12

## 13

14  
15  
16  
17  
18  
19  
20  
21

22  
23  
24  
29

1 shall notify ADEQ in writing within five (5) calendar days after Maricopa County or its agents  
2 become aware of the occurrence. The written notice provided to ADEQ shall describe in detail  
3 the event, the anticipated delay, the measures taken and to be taken by Maricopa County to  
4 prevent or minimize delay, and a proposed timetable under which those measures will be  
5 implemented. Maricopa County shall take all reasonable measures to prevent or minimize any  
6 delay caused by the *force majeure*. Failure of Maricopa County to comply with any  
7 requirements of this paragraph for a particular shall preclude Maricopa County from asserting  
8 any claim of *force majeure* for that event.

9 **VIII. SITE ACCESS**

10 ADEQ may at any time, upon presentation of credentials to authorized personnel on duty,  
11 enter upon the premises at the Facility for the purpose of observing and monitoring compliance  
12 with the provisions of this Consent Order. This right of entry shall be in addition to, and not in  
13 limitation of or substitution for, ADEQ's rights under applicable law.

14 **IX. CORRESPONDENCE**

15 All documents, materials, plans, notices, or other items submitted as a result of this  
16 Consent Order shall be transmitted to the addresses specified below:

17 To ADEQ:

18 Arizona Department of Environmental Quality  
19 Waste Programs Division  
20 Attention: Solid Waste Inspections and Compliance Unit  
21 1110 West Washington Street  
22 Phoenix, Arizona 85007-2935  
23 Telephone: (602) 771-4673

24 To Maricopa County:

25 Maricopa County Department of Solid Waste  
Attn: Division Manager  
2801 West Durango Street  
Phoenix, Arizona 85009  
Telephone: (602) 506-7336

Submissions to ADEQ as a result of this Consent Order shall be deemed submitted upon receipt.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

2  
3  
4  
5  
6

7  
8  
9  
10  
11  
12

## 13

14  
15  
16

## 17

18  
19

## 20

21  
22  
23



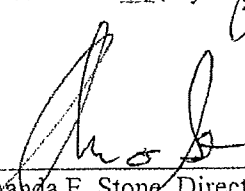
1 **XIV. PARTIES BOUND**

2 No change in ownership, corporate status, or partnership status relating to the subject of  
3 this Consent Order will in any way alter the responsibilities of Maricopa County under this  
4 Consent Order. Maricopa County will be responsible, and will remain responsible, for carrying  
5 out all activities required under this Consent Order.

6 **XV. TERMINATION**

7 The provisions of this Consent Order shall be deemed satisfied and this Consent Order shall be  
8 terminated upon receipt of written notification from ADEQ that Maricopa County has  
9 demonstrated, to the satisfaction of ADEQ, that all of the terms of this Consent Order have been  
10 completed. Any denial of a request for termination from Maricopa County will be in writing and  
11 describe which terms of the Consent Order have not been completed to the satisfaction of  
12 ADEQ. ADEQ reserves the right to terminate this Consent Order unilaterally at any time for any  
13 reason. Any termination will include a written explanation of the reason(s) for termination.


14 ISSUED this 14th day of January, 2010

15  
16   
17 \_\_\_\_\_  
18 Amanda E. Stone, Director  
Waste Programs Division  
Arizona Department of Environmental Quality

CONSENT TO ORDER

The undersigned, on behalf of Maricopa County, hereby acknowledges that [he/she] has read the foregoing Consent Order in its entirety, agrees with the statements made therein, consents to its entry and issuance by the Arizona Department of Environmental Quality, agrees that Maricopa County will abide by the same and waive any right to appeal therefrom.

DATED this 15 day of Dec., 2009.

  
Max Wilson, Chairman, BOS 11/809  
Maricopa County

ORIGINAL of the foregoing Consent Order was sent certified mail, return receipt requested, this 19 day of January, 2010 to:

Max Wilson, Chairman, BOS  
Maricopa County  
301 West Jefferson Street  
10<sup>th</sup> Floor  
Phoenix, Arizona 85003

1 COPY of the foregoing Consent Order was filed this 19 day of January, 2000 with:

2 Arizona Department of Environmental Quality  
3 Office of Administrative Counsel  
4 Attention: Judith Fought, Hearing Administrator  
5 1110 West Washington Street  
6 Phoenix, Arizona 85007-2935

7 COPIES of the foregoing Consent Order were sent by regular/interdepartmental mail, this 19  
8 day of January, 2000 to the following:

9 Tamara Huddleston, Chief Counsel  
10 Environmental Enforcement Section, Office of the Attorney General  
11  
12 Mindi Cross, Manager  
13 Solid Waste Inspections and Compliance Unit  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25